IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 3658 of 2007
Date of decision 12 .3.2007

Manjit Singh and others .. petitioners

Versus

State of Punjab and another .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.HS Sethi, Advocate for the petitioners

M.M.Kumar, J.

This petition filed under Article 226 of the Constitution is directed against the order dated 26.2.2007(Annexure P.4) seeking to revert the petitioners from the post of Station Fire Officers to that of Sub Fire Officers who have been working in various Municipal Councils. The petitioners were promoted from the post of Sub Fire Officer to that of Station Fire Officer in July, 2006. It has not been disputed before us that the petitioners have been promoted ahead of their seniors in the tentative seniority list of Sub Fire Officers of the Municipal Councils and their seniors have not been considered for promotion. On the afore-mentioned ground, the government decided to consider the matter afresh and promotion orders of the petitioners were withdrawn. They have, however, been asked to continue as Sub Fire Officers in the same Municipal Council where they were working as Station Fire Officers.

We have heard Mr. H.S.Sethi, learned counsel for the petitioners at a considerable length. The first and fore-most argument raised by him is that the impugned order reverting the petitioner has been passed without complying with the principles of natural justice of issuing show

cause notice and then affording of an opportunity of hearing to them. On merits it is sought to be submitted that the requirement of diploma in Fire Engineering from National Fire Services College, Nagpur or equivalent examination has been introduced by the Director Local Bodies and in that regard reliance has been placed on Clause 28 of the Standing Order, as per the averments made in paras 3 and 8 of the writ petition. Accordingly it was sought to be argued that the Director- respondent no.2 adopted the Draft Recruitment Rules providing for passing of Diploma in Fire Engineering from the National Fire Service College or equivalent examination prescribed by the Standing Fire Advisory Committee (Annexure P.1). The afore-mentioned rules are stated to have been adopted and it is claimed that the petitioners were promoted as Station Fire Officer on the basis of the diploma qualifications acquired by them from the prescribed college. Promotion order dated 3.7.2006 in respect of petitioner nos. 1 to 2 and 4 and the order dated 5.7.2006 in respect of petitioner no.3 have been placed on record as Annexures P.2 and P.3.

We have thoughtfully considered the submissions made by the learned counsel and are of the view that the writ petition is devoid of any merit. On merits it is abundantly clear that Punjab Municipal Service (Recruitment and Conditions of Service) Rules, 1975 governs the service conditions of the petitioners. It also regulates the promotion from the post of Sub Fire Officer to that of Station Fire Officer. The matter came up for consideration of this Court in CWP No. 4258 of 2000 which has been decided on 8.11.2001 holding that the qualification of diploma in Fire Engineering from National Fire College, Nagpur has been prescribed only for those who are to be appointed by way of direct recruitment. In other

words, no qualification of diploma in Fire Engineering from National Fire Service, Nagpur is required for promotion. On that ground, the petitioners who are admittedly junior to number of persons would naturally not be entitled to be considered for promotion ahead of their seniors on the basis of so called qualification of diploma. The precise question has been answered by the Division Bench by observing as under:

> " We find that only for an appointment by direct recruitment it has been prescribed that the candidates should hold a diploma in Fire Engineering from National Fire Services College, Nagpur, whereas there is no such prescription for appointment by way of promotion. Therefore, we find that there are no grounds for rejecting the claim of the petitioner for promotion to the post of Station Fire Officer w.e.f. the date his juniors was promoted as such.
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> Accordingly, this writ petition is allowed directing the respondents to consider the case of the petitioner for promotion to the post of Station Fire Officer with effect from the date his juniors were promoted as such."

The first argument of the learned counsel that principles of natural justice should have been followed before recalling the order of their promotion passed in July, 2006 would not detain us because it is well settled that jurisdiction of this Court is not required to be exercised in cases where though principles of natural justice have been violated but as a result of quashing such an order an illegal order has to come in operation. In that

regard, reliance may be placed on a judgement of the Hon'ble Supreme Court in the case of Gadde Venkateswara Rao v. Government of Andhra Pradesh and others 1966 (2) SCR 172 which has been followed and applied by the Hon'ble Supreme Court in the case of M.C.Mehta v. Union of India and others JT 1999(5)SC 114. In the later judgement, their Lordships of Hon'ble the Supreme Court also referred to another judgement in the case of Mohammad Swalleh and others v. Third Addl. District Judge, Meerut and another JT 1987(4) SC 291. In the case of Gadde Venkateswara Rao (supra) their Lordships observed as under:

> " The above case is clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of principles of natural justice or is otherwise not in accordance with law."

If we accept the contention raised by the learned counsel to quash the order for non compliance with the principles of natural justice then the resultant effect would be that persons far senior to the petitioners would be deprived of consideration of their cases for promotion to the post of Station Fire Officer from the post of Sub Fire Officer and the order of promotion of the petitioners would be revived which would obviously be an illegal order as it not only violates fundamental rights of those seniors granted by Articles 14 and 16(1) of the Constitution but also run contrary to

the provisions of the relevant rules.

Even otherwise we find that there is no introduction of diploma qualification for promotion from the post of Sub Fire Officer to that of Station Fire Officer. The argument raised by the learned counsel for the petitioners that Director – respondent no.2 has adopted the Standing Order issued by the Government of India (Annexure P.1) does not require any detailed examination because no subordinate legislation could be framed by respondent no.2 until and unless the recommendations by the Government are received by following the procedure as contemplated by Article 162 of the Constitution of India. It is no doubt true that subordinate legislation/ instructions can be issued by the Government from time to time to supplement the rules already in existence but to do that the orders are required to be passed by the Government as per the requirement of Article 162 of the Constitution.

Respondent no.2 who is merely a Director, Local Government, Punjab could not issue any binding instructions having content and character of a subordinate legislation. The contention is totally bereft of merit and is hereby rejected.

For the reasons recorded above, this petition fails and the same is dismissed.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

12.3.2007
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